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Obtaining of Information

The complaint

I would ask the Senate to carefully consider Clause 4 of the Bill which states:

> *4 Obtaining information*
>
> *(1) The Registrar may, where it is reasonably necessary for the purposes of **this** Act, by written notice, require a **person**:*
>
> *(a) to **give** to the Registrar, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, such information as the Registrar requires; and*
>
> *(b) to **attend** before the Registrar, or before an officer authorised by the Registrar for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and*
>
> *(c) to **produce** to the Registrar, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.*

In my experience the "circumstances" of this Clause are without precedence/precedent in the making of legislation. The Bill states:

> *A Bill for an Act to amend the law relating to child support, and for related purposes*

and Clause 3 states:

> *3 Schedule(s)*
>
> *Each Act that is specified in a **Schedule** to **this** Act is amended or repealed as set out in the applicable items in the **Schedule** concerned, and any other item **in a Schedule** to this Act has effect according to its terms.*

As seen "this Act" [if **made** from this Bill] has the singular purpose of amending/repealing [sic - or substituting] or "having effect" to things in Schedules. But the "Spanish Inquisition" Clause 4 sits/stands all on its own, to be used "for the purposes" of this Act, and we would assume it reaches its use by date on 1 July 2008. I refer to it as being Spanish Inquisition because firstly it closely resembles s 120 of the CSRCAct [Collection Act], and secondly because of the widespread abuse of this section by **illegal** use under the CSAAct [Assessment Act]

*120 Obtaining of information and **evidence***

*(1) The Registrar may, for the purposes of **this** Act, by notice in writing, require a person:*

> *(a) to **furnish** to the Registrar, within a reasonable period, and in a reasonable manner, specified in the notice, such information as the Registrar requires;*
>
> *(b) to **attend** before the Registrar, or before an officer authorised by the Registrar for the purpose, at a reasonable time and place specified in the notice, and then and there answer questions; and*
>
> *(c) to **produce** to the Registrar, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person.*

Indeed similar words are to be found in s 161 of the CSAAct, but the words "for the purposes of this Act" are very hollow because as long as a payer has attended to his [normally his] Taxation Assessment on time the **only** information the CSR is allowed to access/record is the details contained **in** that Tax Assessment. As seen herebelow the government is totally clear about these matters and has therefore used smokescreens and firewalls to cloud and cover up the fact that since 1992 [the introduction of Part 6A] the CSR has totally disregarded the legislation in her/his own version of the Spanish Inquisition which she [Catherine] named the COAT and he [Matt] has so far not amended.

The Brough Offensives

The current **public** manifestation of this obfuscation is the "deadbeat dad" media campaign by Mal Brough. Well even you as Senators could be excused for thinking it is a single campaign but at least 2 people [Kirby J and myself] know it is actually two. And the government **knows** we know, hence we can change countries to say that it would appear that this Mexican Standoff is the **reason** for the clandestine insertion of Clause 4.

To explain the two offensives, the CSRCAct allows for a "registrable liability" [eg a child support assessment under the CSAAct or a spouse/child maintenance order under the FLAct] to be registered and then collected monthly by the CSR, and failing payment any debt becomes a debt of the Commonwealth and the CSR is not only empowered to require a person [eg a bank public officer] to provide information but also to seize monies. Furthermore if the debt persists the CSR may cause to be issued an Enforcement Summons [the "still called" Order 33 process] seeking a court order for seizure of property to the value of the debt.

The CSR has always retained delegated officers [Recovery Teams #1 to #5] assisted by the AGS to recover debts of the Commonwealth, and Brough Offensive #1 is simply an injection of another $100 million to that **legal** task. I say legal because at the Hearing the payer is given the chance to lead evidence that the debt is in effect a phantom debt, before the court might make orders for recovery.

But there is also Brough Offensive #2 which is the allocation of another $100 million or so to do such things as hire "forensic accountants" to delve into the private records of payers to "shame them" into "supporting their kids". Of course this is totally illegal as there is no provision in the CSAAct for the CSR to do anything but apply a formula [Part 5] to a figure supplied by the Tax Office to the CSR, and since 1992 to make a determination [Part 6A] as to possible departure **from** that formula result from Part 5, based upon assertions [not evidence] **made by the parties themselves**.

Therefore the genius of the Brough Offensives is that the progress reports in the press releases jump seamlessly from one Offensive to the other, with the juxtapositioning totally obfuscating the fact that the Offensive #2 is totally illegal. In other words it can't be waged in the courts like Offensive #1 so it is being waged in the court of public "opinion", riding on the feminist deadbeat dad hysteria recently imported from America.

Luton & Lessels

A reading of the transcript of Luton and Lessels reveals that counsel assisting the CSR Mr Bennett QC started out by trying a similar ploy on the High Court, but Kirby J was ready from the start, called a Shenanigans and told counsel to clearly indicate and preface all submissions with an indication of which act was being discussed. Mr Bennett meekly complied, mumbling that the acts were not beautiful. And more importantly for justice, Kirby J then clearly separated the two acts in his Reasons for Judgment.

The Firewalls

So while the government has been perky in its success fooling child support paying blokes [a very easy task] it has not been foolish and obviously would not have implemented the Brough Offensive #2 without additional means of keeping those seeking justice from the courts. In child support/privacy matters, Firewall #1 is of course the COAT itself and its rewrite of the CSAAct called The Guide, but aided by the Privacy Commissioner and Ombudsman, and of course you are about to give us the quango from Hell [or perhaps from Heaven, given the makeup from the "social security sector"] the SSAT

But as found recently, if a citizen is still prepared to head for court after all of the above then she/he is subjected to Fire & Brimstone phone calls from the Australian Government Solicitor threatening all manner of costs orders if the litigant does not retract the application by "consent". So all in all these Firewalls in practice put Norton to shame.

But it would be recalcitrant of me not to complete the picture with an explanation of the template letter [plagiarism if you are now a RimmerGate fan] from the Ombudsman. Instead of doing the softly softly approach of Brough, Bennett, the Ombudsman just goes for the jugular and invents a new Act, per

> *"Whilst I acknowledge the concerns expressed in your complaint, it appears that the actions taken by CSA accord with its powers to both gather information and administer the **Child Support Act**"*

So in the flash of a pen the Ombudsman Firewall did what the 1994 JSC determined to be Constitutionally impossible, and **combined** the two Acts [so the legal actions of Brough Offensive #1 could be "imported" to Offensive #2].

The Summary

The most obvious point of all is that the CSR has no power to do **anything at all** under "this Act", as this Act is purely an Act to, *inter alia,* **amend** "other Acts". Therefore, given that fact and the facts set out hereabove regarding the **abuse** of powers [real and imaginary] by, *inter alia,* the CSR, then one must conclude that there is something very smelly in Denmark and this Clause is set to morph into something more vile than any creature in Lord of the Rings.

So it is fitting in my submission to return to Harrington & Lowe where the majority decision of the High Court was to pussy foot with Nicholson's secret wimmens business Rules in Order 24 by using a "**blue** pencil" approach. The brave but, as usual, dissenting judgment of Kirby J was to simply bring out the **red** pen, per:

> *"In the language of Mason and Wilson JJ in Evans the rule "is either **good** or **bad**" in its totality. In my view it is **bad**."*

The result was that Nicholson CJ was so embarrassed when he saw the absurdity of what he had "tried on" that he took it on **himself** to use the dissenting red pen and zapped both subsections. I say that if you Senators have any aspirations at all to protecting the [diminished] rights of our citizens to justice and privacy then you will use the red pen on Clause 4.